

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

DIANNA ELDER,)	
)	
Plaintiff)	
)	
v.)	No. 3:05cv0651 AS
)	
LINDA S. McMAHON, Commissioner of Social Security,)	
)	
Defendant)	

MEMORANDUM, OPINION AND ORDER

This court takes full judicial notice of the record before it in this case including the extensive oral argument that was presented in open court in South Bend, Indiana on March 22, 2007. This court has given close attention to a wide array of Court of Appeals opinions in the recent past dealing with review of decisions under the Social Security Act. This court notices that among interested people there can be serious disagreements in close cases. For example, see the dissenting opinion of Judge Rovner in *Sanchez v. Barnhart*, 467 F.3d 1081 (7th Cir. 2006), as well as the dissenting opinion of Judge Coffey in *Carradine v. Barnhart*, 360 F.3d 751 (7th Cir. 2006). There are other recent opinions of the Court of Appeals in which there have been reversals in procedural contexts similar to this. For example, see *Allord v. Barnart*, 455 F.3d 818 (7th Cir. 2006); *Kangail v. Barnhart*, 454 F.3d 627 (7th Cir. 2006); *Mendez v. Barnhart*, 439 F.3d 360 (7th Cir. 2006); *Gentle v. Barnhart*, 430 F.3d 865 (7th Cir. 2006); *Smith v. Barnhart*, 388 F.3d 251 (7th Cir. 2004); and *Barrett v. Barnhart*, 355 F.3d 1065 (7th Cir. 2004).

This court has also given close attention to *Lopez ex rel. Lopez v. Barnhart*, 336 F.3d 535 (7th Cir. 2003). The very able magistrate judge therefore gave it very close attention. The lawyers representing both the interest of the claimant and of the commissioner provided extended and able arguments. Given all that is presently involved, this court cannot in conscience and principle deal with it differently than the magistrate judge. This court well realizes that it is not here to rubber-stamp the decision of the administrative law judge, and certainly this court does not believe that has been done. Neither is it this court's function to rubber-stamp the decision and recommendation of the magistrate judge.

The case remains a close one that appears to lean slightly in favor of the Commissioner. The findings of the administrative law judge are not perfect, but sometimes the perfect is the enemy of the good. It is the view here now that those findings do not run afoul of the decisions of the Court of Appeals in this circuit, and especially those that are cited here. That is also a close question. Given the nature of this court's review, this court cannot gainsay the decision of the magistrate judge here, and will not do so. With all due respect to all involved, it is the reluctant conclusion here that the report and recommendation of the magistrate judge filed February 20, 2007 be, and it is **APPROVED** and **CONFIRMED**. The Clerk shall enter judgment thereon in favor of the Commissioner and against the Plaintiff. **IT IS SO ORDERED.**

DATED: March 22, 2007

S/ ALLEN SHARP

ALLEN SHARP, JUDGE

UNITED STATES DISTRICT COURT

cc: The Honorable Christopher A, Nuechterlein